

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SAN MIGUEL ELECTRIC
COOPERATIVE, INC.
RN102342961

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2015-1640-IWD-E

I. JURISDICTION AND STIPULATIONS

On SEP 07 2016, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding San Miguel Electric Cooperative, Inc. (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a lignite-fired steam electric generating power plant at 6200 Farm-to-Market Road 3387, approximately six miles east of State Highway 16, near Christine, Atascosa County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 24, 2015.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Twenty-Six Thousand Five Hundred Sixty-Four Dollars (\$26,564) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Twenty-One Thousand Two Hundred Fifty-Two Dollars (\$21,252) of the administrative penalty and Five Thousand Three Hundred Twelve Dollars (\$5,312) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. By March 16, 2015:
 - i. Conducted effluent sampling and analyses of the ash ponds and equalization pond.
 - b. By March 18, 2015:
 - i. Installed a temporary berm around the north, east, and south diked sides of the equalization pond;
 - ii. Ceased pumping industrial wastewater from the equalization pond to the ash ponds; and
 - iii. Ceased the unauthorized discharge from the equalization pond.
 - c. By March 24, 2015:
 - i. Ceased pumping industrial wastewater from the ash ponds to the Lignite Yard Retention Pond; and
 - ii. Ceased the unauthorized discharge from the ash ponds.
 - d. By May 26, 2015,
 - i. Conducted effluent sampling and analyses of the Lignite Yard Retention Pond; and

- ii. Plugged the drain located adjacent to the ash pond siphon pumps and installed a pump to route overflows back to the ash ponds.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to prevent an unauthorized discharge of industrial wastewater into or adjacent to any water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002601000, Permit Conditions No. 2.g and Other Requirements Nos. 7 and 13(b), as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, the elevated water level of the ash ponds caused by significant rainfall and reduced operating loads of the Facility, resulted in the unauthorized discharge of industrial wastewater on March 13, 2015. An estimated 519,882 gallons of industrial wastewater discharged from the ash ponds through the upper portion of the siphon structure and travelled offsite into an unnamed tributary and thence to Souse Creek.
2. Failed to prevent an unauthorized discharge of industrial wastewater into or adjacent to any water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0002601000, Permit Conditions No. 2.g and Other Requirements Nos. 3 and 13(b), as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, the elevated water level of the equalization pond caused by significant rainfall and reduced operating loads of the Facility, resulted in the unauthorized discharge of industrial wastewater on March 14, 2015. An estimated 368,805 gallons of industrial wastewater overflowed from the eastern portion of the equalization pond and travelled offsite into an unnamed tributary and thence to Souse Creek.
3. Failed to properly operate and maintain the Facility and all of its systems of collection, treatment, and disposal, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1) and (5), and TPDES Permit No. WQ0002601000, Operational Requirements No. 1, as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, the ash ponds contained approximately 40% solids and the equalization pond contained approximately 70% solids.

4. Failed to take all reasonable steps to minimize or prevent any discharge, sludge use, disposal, or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1) and (4), and TPDES Permit No. WQ0002601000, Other Requirements No. 3 and Permit Conditions No. 2.g., as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, industrial wastewater was routed from the ash ponds and equalization pond into the Lignite Yard Retention Pond from March 13 to March 18, 2015 and March 21 to March 24, 2015, resulting in the commingling of industrial wastewaters. Subsequently, during three discharge periods, March 21 to April 11, 2015, April 18 to May 1, 2015, and May 12 to May 18, 2015, a total of an estimated 23.966 million gallons of commingled industrial wastewater was discharged from Outfall No. 001.
5. Failed to properly operate and maintain the Facility and all of its systems of collection, treatment and disposal, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1) and (5), and TPDES Permit No. WQ0002601000, Operational Requirements No. 1, as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, the drain located adjacent to the ash pond siphon pumps is plumbed directly to the Lignite Yard Retention Pond, allowing for the commingling and subsequent discharge of industrial wastewater when the siphons overflow.
6. Failed to notify the TCEQ Regional Office, orally or by facsimile transmission, within 24 hours of becoming aware of any noncompliance which may endanger human health or safety, or the environment, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (9)(A) and TPDES Permit No. WQ0002601000, Monitoring Requirements No. 7.a, as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, the unauthorized discharge that was discovered on or about March 13, 2015 was not reported to the TCEQ San Antonio Regional Office until March 17, 2015.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: San Miguel Electric Cooperative, Inc., Docket No. 2015-1640-IWD-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Properly collect and dispose of the excess solids within the ash ponds; and
 - ii. Implement improvements to the Facility's process procedures, guidance, training, and/or oversight to ensure that:
 - (1.) All noncompliance notifications for violations that may endanger human health or safety, or the environment are submitted to the TCEQ San Antonio Regional Office, orally or by facsimile transmission, within 24 hours of becoming aware of the noncompliance, in accordance with 30 TEX. ADMIN. CODE 305.125(9)(A) and 9(B) and TPDES Permit No. WQ0002601000, Monitoring and Reporting Requirements No. 7.a; and
 - (2.) Through solids removal, pond maintenance, and operating practices, the amount of solids within the Facility's ponds allow for the proper management of wastewater during periods of elevated rainfall or reduced operating loads of the Facility.
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.a.i and 2.a.ii, in accordance with Ordering Provision No. 2.g below.
 - c. Within 60 days after the effective date of this Agreed Order, conduct an engineering evaluation of the Facility's Lignite Yard Retention Pond to determine the level of contamination caused by the commingled industrial wastewater. The evaluation shall be prepared and approved by a registered Texas Professional Engineer and include a plan and schedule for the completion of necessary corrective actions within 270 days after the effective date of this Agreed Order.
 - d. Within 75 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.c, in accordance with Ordering Provision No. 2.g below.
 - e. Within 270 days after the effective date of this Agreed Order:
 - i. Properly collect and dispose of the excess solids within the equalization pond; and

- ii. Complete the necessary corrective actions designed to remediate the Lignite Yard Retention Pond, as prescribed in the evaluation required by Ordering Provision No. 2.c.
- f. Within 285 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.e.i and 2.e.ii, in accordance with Ordering Provision No. 2.g below.
- g. The written certification of compliance required by Ordering Provision Nos. 2.b, 2.d, and 2.f shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
- 4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent

shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W Shaw
For the Commission

9-13-16
Date

Paula Marie J
For the Executive Director

7/21/16
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Derrick Brummett
Signature

April 26, 2016
Date

Derrick Brummett
Name (Printed or typed)
Authorized Representative of
San Miguel Electric Cooperative, Inc.

Interim General Manager
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 15, 2016

FIRST CLASS MAIL

Derrick Brummett, Interim General
Manager
San Miguel Electric Cooperative, Inc.
P.O. Box 280
Jourdanton, Texas 78026-0280

RE: San Miguel Electric Cooperative, Inc.
TCEQ Docket No. 2015-1640-IWD-E; Permit No. WQ0002601000
Agreed Order Assessing Administrative Penalties and Requiring Certain Actions

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Texas Commission on Environmental Quality's Enforcement Division at (512) 239-2545 or the Litigation Division at (512) 239-3400. If there are questions pertaining to the mailing of the order, then please contact Leslie Gann of the Office of the Chief Clerk at (512) 239-3319.

Sincerely,

A handwritten signature in cursive script that reads "Bridget C. Bohac".

Bridget C. Bohac
Chief Clerk

BCB/lg

Enclosure

cc: Larry Butler, Enforcement Coordinator, TCEQ Enforcement Division